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April 30, 2014 9:19 AM
TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

BY: ns SCANNED BY: MS 430

180 /

181 **David William Nail,**
182 **The Honorable,**

185 -v.- Case No.1:12-CV-1345

187 **Brent Myers, Penny Adams,**
188 **Autumn Schrauben,**

Defendants.

194 **MEMORANDUM OF LAW / BRIEF IN SUPPORT OF THIS PLAINTIFF'S**

195 **MOTION TO STAY ALL PROCEEDING AND THEN TO LIFT**

196 **WHEN A NEW JUDGES IS ASSIGNED TO THIS CASE.**

198 Herein The Plaintiff David W. Nail In His Own Proper Person States The
199 Following To Be True To The Best Of His Knowledge And Information That He Has
200 Received And Believes To Be True.

201 This Pro Se Plaintiff David W. Nail states that on 12/11/2012 this case was filed
202 in the above captioned U.S. District Court and on 12/04/2013 (docket # 18.) this Plaintiff
203 filed an Affidavit and Motion for the recusal of Magistrate Judge Ellen S. Carmody and
204 U.S. District Judge Janet T. Neff for the reasons so stated in docket entries of; #12., 14.,

205 17., 18. and the reasons so stated within the lawsuit that has been filed on April 25th 2014
206 against the above named judges for their violations of this Plaintiff's U.S. Constitutional
207 rights in this case.

208 This Plaintiff states this memorandum of law/brief is in support of his motion and
209 provides the legal premises for this Plaintiff's above captioned motion to stay and to lift
210 the stay when a new U.S District judge has been assigned.

211 On 03/05/2013 (docket # 9.) Magistrate Judge Ellen S. Carmody filed her first
212 recommendation in this case and on 03/14/2013 (docket # 12.) this Plaintiff filed his first
213 objection against Magistrate Carmody's recommendation asserting amongst many issues,
214 that this Plaintiff was being held to a higher standard of pleadings than was permissible
215 by Magistrate Carmody and supported that claim with the following cases; Haines v
216 Kerner 92 Sct 594; Power, F.2d 1459 (11th Cir. 1990), Husley v. Owens 63 F3d 354 (5th
217 Cir. 1995), Hall v. Bellmon 935 F.2d, 1106 (10th Cir. 1991), Michael E. Love v. Kansas
218 City, Kansas Police Department, United States District Court for the District of Kansas,
219 Case No. 112139-Sac., Memorandum and Order, 19th day of April 2011 wherein this
220 Plaintiff stated he was not to be held to the same standards as a practicing lawyer wherein
221 the pleadings of the complaint and other documents are to be considered without regard
222 to technicalities.

223 This Plaintiff states that it is misconduct (judicial code of cannons 1 & 2) for
224 magistrate judge Carmody to write in her recommendation that this Plaintiff did not state
225 things in his complaint that he did; and it is a continuation of that misconduct for the
226 District judge Neff; pursuant to the Judicial Cannons # 1 and # 2 wherein judge Neff was

227 to be monitoring magistrate Carmody to uphold that misconduct of Defendant Carmody
228 by ordering that recommendation be upheld based on false information.

229 This plaintiff states that magistrate Carmody stated false outside of this case
230 information in her first recommendation (docket #9.) and pursuant to 28 U.S.C. § 144
231 (1970) this was grounds for her recusal inasmuch as this misconduct was based on her
232 opinions and abuse of discretion of her first recommendation of false information
233 creating a factual evidentiary dispute of which the Plaintiff brought to the attention of
234 judge Neff in his objections of docket entries #12 and #14 which was then ignored by the
235 adopting of her 10/28/2013 order (docket #15) of the magistrates recommendations of
236 docket entries #9 and #13.

237 This plaintiff states that on 11/25/2013 (docket # 17.) this Plaintiff filed a motion
238 for reconsideration of the Courts order of 10/28/2013 (docket # 15.) and shortly thereafter
239 filed on 12/04/2013 (docket # 18.) the motion for recusal of both magistrate Carmody and
240 judge Neff based on the evidentiary dispute; whereas to this date neither motion has been
241 addressed.

242 This Plaintiff states that the above statement is a documented truth, as the motion
243 to recuse and the motion for reconsideration has never been addressed or adjudicated to
244 this date of Thursday, April 17, 2014 as the docket sheet reflects and has been bias and
245 prejudicial towards this Plaintiff and his case.

246 Therefore when magistrate Carmody granted Brent Meyers attorney that motion
247 for an extension of time (Doc # 19.) on Jan. 3rd 2014 in this 1:12-cv-1345 case; while an
248 affidavit an motion for recusal (dated 12/04/2013, Doc # 18.) is still pending against her
249 and judge Neff and that pleading had not been adjudicated prior to the granting of

250 extension of time to Defendant Meyers to answer the complaint; she was acting without
251 jurisdiction or authority and in her individual personal capacity and outside her
252 immunity; as the wording to recuse under 28 U.S.C. § 144 (1970) utilizes the directive of
253 shall;

254 **“Such judge shall proceed no further;”**
255 wherein denying Defendant Carmody by federal statute any authority or jurisdiction
256 pursuant to 28 U.S.C. § 144 to grant that motion (or any motion) in this case for an
257 extension of time to answer the Plaintiff’s complaint by Brent Meyers attorney and said
258 acts have been prejudice and bias towards this Plaintiff and this case.

259 This Plaintiff states that there are two sections of Title 28 of the United States
260 Code (the Judicial Code) that provide standards for judicial disqualification or recusal.
261 Section 455 captioned "Disqualification of justice, judge, or magistrate judge," provides
262 that a federal judge;

263 **"Shall disqualify himself in any proceeding in which his impartiality might
264 reasonably be questioned."**

265 The same section also provides that a judge *is disqualified* "where he has a personal bias
266 or prejudice concerning a party;" "Or personal knowledge of disputed evidentiary facts
267 concerning the proceedings."

269 This Plaintiff states that the misconduct and prejudice acts of judge Neff and
270 magistrate Carmody are obvious as this 1:12-cv-1345 cases docket sheet reflects that they
271 are jumping over motions and answering what they choose and when they choose and
272 stating false information about what this Plaintiff stated within his complaint; which are
273 all prejudicial and acts of misconduct against this Plaintiff.

274 This Plaintiff states that violations of this Plaintiff's United States 14th
275 Constitutional Amendment rights by magistrate Carmody and judge Neff as so stated in
276 the federal complaint that was filed on April 25th 2014 gives rise to this stay pursuant to
277 "Bivens v. Six Unknown Narcotics Agents 403 U.S. 388 (1971)" as the prejudicial and
278 acts of misconduct of magistrate Carmody and judge Neff to date has harmed this
279 Plaintiff:

280 PRAYER FOR RELIEF;

Therefore This Plaintiff;

284 A. **Moves For A Stay Of All Proceedings Until A New Judge Has**
285 **Been Assigned To This Case,**
286 B. **That The Stay Be Lifted When A New Judge Has Been Assigned,**
287 C. **That A Complete Reevaluation Of This Plaintiff's 1:12-Cv-1345**
288 **Complaint Be Made Upon The New Judges Assignment To This**
289 **Case Due To The Prejudicial and Acts Of Misconduct That Has**
290 **Taken Place Against This Plaintiff.**

291
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300 4/28/2014 Date